

A4	<p>You may present your interim bill of costs for work done in the course of proceedings. LAD will consider the amount of advance payment payable, pursuant to Regulation 6 of the LA(SOF)R.</p> <p>There is no restriction on the number or frequency of submission of interim bills but you should exercise prudence and professional judgment before submission. LAD may also request for information/documentation when considering your request.</p> <p>As you may provide interim bill of costs at different intervals, you should not include the work done covered by the first / earlier interim bill(s) (previously sent to LAD for advance payment) in your second / subsequent interim bill(s) again.</p>
Q5	How about the fee-notes submitted by the assigned counsel to me? When should I present the same to LAD?
A5	<p>You should pass the fee-notes submitted by the assigned counsel (AC) to LAD promptly, together with supporting documents like Counsel’s advice, for advance payment. LAD officer will consider the amount of advance payment to be made to AC direct.</p>
Q6	How about the fee-notes submitted by expert and other service providers such as mediators and interpreters? When should I present the same to LAD?
A6	<p>You should pass the fee-notes to LAD promptly, together with supporting documents like expert reports, for settlement.¹ Please note that payment to the expert(s) and other service providers such as mediators and interpreters would only be made after, and not before, the requested services had been delivered.</p>
Q7	How much will LAD pay me as an advance payment? Why didn’t LAD pay me 75% of my claim under my bill of costs?
A7	<p>According to Regulation 6(1) of the LA(SOF) R, LAD may make an advance payment of fees, the amount of which should NOT exceed 75% of the amount which <u>in LAD’s opinion would have been allowed if there had been taxation.</u>²</p> <p>The yardstick is the amount estimated by LAD to be allowed upon taxation, NOT the amount claimed by the assigned lawyers.</p> <p>Assessment of a lawyer’s fee is not a science. It is challenging to determine what is fair and reasonable in all the circumstances. LAD will consider a variety of factors (such as court level, complexity of the issues / facts in dispute ...etc) and take a broad-brush approach to determine the percentage of advance payment.</p> <p>The following examples illustrate how the percentage of advance payment is calculated :</p> <p>If an assigned lawyer claims costs at \$100 and if LAD estimates that the costs would have been taxed and allowed at \$70, the maximum advance payment would be $\\$70 \times 75\% = \\52.5 (i.e. around 50% of the amount claimed).</p>

¹ See Para 9.10 (for expert) and 12.4 (for mediator) of the Guidance Notes to Solicitors Handling Civil Cases (Chapter 7) of the Manual for Legal Aid Practitioners (“Guidance Notes”)

² See Para 14.12 of the Guidance Notes.

	<p>If LAD estimates that the costs would have been taxed and allowed at \$80, the maximum advance payment would be $\\$80 \times 75\% = \\60 (i.e. around 60% of the amount claimed).</p> <p>The above examples explain an advance payment of up to 75% of the amount which would have been allowed on taxation may be around 50% - 60% of the amount claimed.</p> <p>If the amount of costs finally allowed on taxation is less than the amount paid by LAD in advance, the assigned lawyer has to refund the excess to LAD (see Q20 below). Unfortunately, LAD faces much difficulty in recovering the excess from assigned lawyers, especially from who have retired / ceased practice / left Hong Kong for good.</p> <p>Please take note that LAD will not be responsible for arranging tax refund (for the excess profits/income).</p>
Q8	How should I prepare my bill of costs?
A8	<p>You should, as far as possible, submit your bill of costs by using Form X77, the electronic version of which can be downloaded from the website of LAD (www.lad.gov.hk).</p> <p>Failure to adopt Form X77 or submit bill of costs with inadequate breakdown / information may delay assessment and payment. You should also avoid duplicate claims.</p>
Q9	When I discuss settlement with the opposite parties (OP), can I agree and receive my costs and agreed disbursements with OP direct without LAD's consent?
A9	<p>Yes, you can agree P & P costs with OP, but the agreed costs and disbursements must be paid to LAD direct pursuant to S.19A of LAO. LAD will arrange payment of the amount due to you after deducting the advance payments and other payments previously made. Interests on costs should also be paid to LAD direct pursuant to S.19C of LAO, for transfer to the general revenue.</p> <p>If the P & P costs and disbursements have to be settled out of public fund or moneys of AP such as damages, employees' compensation, lump sum maintenance or property recovered or preserved for AP (i.e. DLA's 1st Charge pursuant to S.18A of LAO) and / or contribution paid by AP upon acceptance of legal aid, e.g. OP is uninsured and does not have the financial ability to settle the costs lost, costs has to be taxed or agreed with LAD / AP.</p> <p>Common fund costs (CF costs) and disbursements, which means costs and disbursements irrecoverable from OP but can be recovered from LAD in accordance with the Legal Aid Regulations on common fund basis (e.g. extra costs and disbursements incurred due to AP's request for re-assignment of legal team, unfavourable AC advice, preparing report letters to LAD) should not be agreed with AP direct without LAD's consent even if the same will be fully paid out of AP's moneys.</p> <p>For cases involving infants / mentally incapacitated persons (MIP), usually the court would order OP to bear costs on CF costs basis. No CF costs and disbursements should be deducted from the moneys of infants / MIP without court's approval.</p>
Q10	When will LAD conduct a full assessment of my costs? What will happen if the case is re-assigned or if the Legal Aid Certificate is discharged or revoked during the course of the proceedings?

A10	<p>Full assessment of CF costs and disbursements will be made only <u>after</u> the P & P costs had been agreed between the parties upon the conclusion of the assigned case, despite you had been re-assigned or the legal aid certificate discharged or revoked in the midst of proceedings.</p> <p>We understand that the original assigned lawyer(s) may feel frustrated because sometimes it may take a long time to conclude the proceedings (especially if AP acts in person or the parties do not proceed with the case expeditiously or at all) and the original assigned lawyer(s) do not know the progress of the same. LAD will keep monitoring the continued merits and progress of active cases. For cases already discharged or revoked in the midst of proceedings, LAD will take steps to check the final costs order and settle the costs of all the assigned lawyers as soon as possible.</p>
Q11	<p>Why doesn't LAD assess / tax my costs earlier? Why is it necessary to await conclusion of the proceedings?</p>
A11	<p>The final order on costs will be made only upon conclusion of the proceedings. Liability for costs and the scale of costs (e.g. on P & P / indemnity / CF basis) would become certain only then. Besides, costs reserved would need determination before assessment of fees can be done. Please see <u>Order 62, rule 9D of the Rules of the High Court (Cap 4A) and also Big Boss Investment Ltd v So Lai Kei [2010] 1 HKLRD 793.</u></p> <p>For cases involving appeal / failure to beat sanctioned payment / wasted costs order / dispute on costs liability pursuant to S.16C of LAO / personal costs order against AP pursuant to S.17 of LAO, more time will be needed to finalize / clarify the liability of costs and scale of costs.</p>
Q12	<p>Will LAD ask me to produce record or documents during the assessment of costs? If so, under what circumstances? Do I need to retain the case papers after conclusion of the case or after re-assignment?</p>
A12	<p>LAD may ask for supporting documents, such as attendance notes, correspondence, court documents for assessment of your costs.</p> <p>It is the primary duty of AS to provide such record or documents (including the documents related to work done by AC) on LAD's request in a timely manner. Failure to provide the supporting documents in a timely manner is one of the major reasons prolonging LAD's assessment. AS's failure to handle costs matters in a timely manner (such as providing supporting document, clarifying reserved costs etc) may also be considered as unsatisfactory performance.</p> <p>To save costs and paper, you may provide us with the electronic version of those documents.</p> <p>You are advised to retain the case papers until the final disposition of the case and its subsequent appeal or re-trial.</p>
Q13	<p>I noticed that my interim bill of costs previously presented to LAD had not been paid by LAD. What should I do?</p>
A13	<p>If you do not receive advance payment within 6 weeks after you have sent us your bill, you should write to double check with us.</p>
Q14	<p>I have submitted a few interim bills of costs previously to LAD for advance payment. When the case settles, should I prepare a fresh bill of costs incorporating all the previous interim bill of costs again for LAD's assessment again?</p>

A14	<p>You must avoid making duplicate claims on your work which had already been covered in previous interim bill(s).</p> <p>Save and except in the case of taxation proceedings being commenced, or where your previously submitted bills of costs do not meet with our requirements and we request you to present a fresh bill, you do not need to prepare a fresh bill of costs incorporating all the previous interim bills of costs already submitted as unnecessary costs would be incurred. We suggest that you simply refer us to those bills for assessment.</p>
Q15	<p>What should I do after I have successfully settled a claim for an AP? Do I need to approach all the lawyers previously assigned by LAD to represent the AP for bill of costs?</p>
A15	<p>You should notify LAD as soon as possible and provide an estimate of the ceiling of all costs and disbursements incurred and to be incurred in the aided proceedings (including those of the former assigned solicitors) within 21 days for us to consider interim payment to AP. In the event that the case had been concluded with DLA's 1st Charge over property recovered / preserved, DLA needs to arrange the release of interim payment(s) to AP after considering the appropriate amount to be withheld, based on your estimate of the total costs and disbursement incurred (including AC's fees) or to be incurred (e.g. costs of taxation and enforcement actions). Any delay in the provision of costs estimates will cause inaccuracy in our assessment of interim payment to AP. Such delay may be considered as unsatisfactory performance on your part.</p> <p>Furthermore, since LAD heavily relies upon AS's estimate on costs and disbursements (including AC's fees) to assess and release interim payment to AP, and since LAD does not have any separate fund to make up any deficit, you should ensure that all your fee notes had been presented to AS in a timely manner. Updating or upward variation of the costs estimate would only be allowed if there are substantial and justified changes in the circumstances.</p>
Q16	<p>I was told that LAD would not pay the balance of my taxed costs and counsel fees until the damages have been fully recovered. Is this correct?</p>
A16	<p>This is a common misunderstanding. LAD will not withhold settling the balance of agreed / taxed costs and fees (e.g. costs and disbursements incurred before judgment / settlement) until the damages have been fully recovered.</p> <p>Sometimes it may be necessary to take out enforcement actions against OP and it takes time and further costs to complete the same. LAD will only finalize account after all the enforcement actions, if appropriate, have been completed and enforcement costs agreed / taxed.</p>
Q17	<p>If I was representing an AP and a non-legally-aided person in the same proceedings, or the same AP in more than one set of aided proceedings but being heard together, how should my bill of costs be issued?</p>
A17	<p>These facts should be spelt out in your bill of costs, together with breakdown on the proportion of time and costs attributed to each matter or party.</p>
Q18	<p>If I was representing more than one AP (e.g. a couple) in the same proceedings, or a group of AP (e.g. a group of occupiers) in the same proceedings, how should my bill of costs be issued?</p>

A18	These facts should be spelt out in your bill of costs, together breakdown on the proportion of time and costs attributed to each AP. The amount of contribution paid by each AP may be different. Facts / legal arguments of each AP may also be different.
Q19	If I was representing an AP in the proceedings but the scope of the legal aid certificate was limited, how should my bill of costs be issued?
A19	<p>The scope of work of a legal aid certificate can be limited. For example, legal aid may be granted to a defendant to defend a case but it does not cover counterclaim, or some interlocutory applications may not be covered by legal aid. Under these circumstances, if you represented AP in those non-aided proceedings nonetheless, you should apportion the costs to reflect the time spent on work covered and not covered by legal aid. For example, if you are instructed by AP to draft the Defence and Counterclaim but legal aid only covers the defence, you should claim the costs for drafting the Defence only.</p> <p>If you are in doubt about the scope of legal aid, you should clarify with LAD before you start doing any task. DLA will not be liable to pay for your work if it is not within the scope of legal aid, even if the instruction was given by AP.</p>
Q20	Is it possible that LAD’s assessment of my costs is lower than the aggregate sum of the advance payments I had already received?
A20	Yes. The fact that advance payment had been made, the amount of any or all of the advance payments made shall not preclude or prejudice LAD from making any representations in subsequent taxation hearings as to the proper level of fees payable to you. ³
Q21	If I do not agree with LAD on the assessment of my costs, what can I do?
Q21	<p>If you do not agree with LAD’s assessment on your costs and disbursements, you may make a counteroffer for our consideration.</p> <p>Further particulars on the complexity of the case, novelty of legal issues, etc are welcome. You may refer to Para 1(2), Part II, First Schedule of Order 62 of the Rules of the High Court (Cap 4A) and the Rules of the District Court (Cap 336H).</p>
Q22	Can I reach an agreement on the hourly rate of myself and my other fee earners with AP or LAD before or upon accepting the assignment / trial?
A22	<p>No.</p> <p>According to Regulation 5 of the LA(SOF)R, the costs and disbursements payable by LAD to AS acting for an AP shall be such as may be allowed on taxation or, in default of taxation, shall be as may be fixed by LAD, not exceeding such amount as in the opinion of LAD would have been allowed if there had been taxation. Hence, even if you had provided your quotation or hourly rate to AP before you were assigned, your costs and disbursement would still be subject to DLA’s assessment and/or taxation.</p>
Q23	How long does it take for my costs to be assessed by LAD and why is that I am asked to wait sometimes?

³ See Para 14.12 of the Guidance Notes and also Regulation 6(2) of the LA(SOF)R.

A23	<p>It depends on the time needed to conclude the case. Please see Q11 above. Full assessment of your costs and disbursements claimed under CF basis will be made only after the P & P costs had been agreed between the parties, upon the conclusion of the assigned case, when the final cost order would be available. Your bill of costs presented before the conclusion of the case would not be assessed, although advance payment would be made pursuant to Regulation 6 of the LA(SOF)R.</p> <p>Other common factors affecting the time to be spent on the assessment of your costs include :</p> <p>(a) complexity of the proceedings;</p> <p>(b) change of the legal teams causing extra time spent in sorting out bills issued by the former AS and AC;</p> <p>(c) cessation of practice or intervention by the Law Society of AS or former AS;</p> <p>(d) discharge or revocation of legal aid in the midst of the proceedings;</p> <p>(e) proceedings left in abeyance after discharge or revocation of legal aid;</p> <p>(f) proceedings pending appeal or retrial;</p> <p>(g) lack of documentation relating to entitlement and/or quantum;</p> <p>(h) bills or fee notes lacking in details of the work done; and</p> <p>(i) failure on the part of AS/AC/former AS/former AC to respond to our requests for clarifications and/ or supporting documentation.</p>
Q24	What if the proceedings were left in abeyance after discharge or revocation of legal aid? Will LAD withhold assessment indefinitely?
A24	<p>LAD will take steps to check the final costs order and settle the costs of all the assigned lawyers as soon as possible. For cases which have been dormant for years, LAD will, where appropriate, try to assess and settle the costs of all the assigned lawyers and arrange payment, subject to the assigned lawyers' undertaking to refund the difference if the costs were finally taxed when the case is concluded.</p>
Q25	If I have any comment or submission on the assessment of my bill of costs, can I contact the assessing officers directly?
A25	<p>Full assessment of the assigned lawyers' costs / fees would be conducted by the staff of the Costing Unit under the purview of the Policy & Administration Division. Costing Unit may write to AS / AC for supporting documents and AS /AC can reply to Costing Unit direct. If AS / AC have any comment or submission on Costing Unit's assessment, AS / AC are welcome to send their observation and counter-offer in writing to LAD. Costing Unit will consider AS / AC's submission and counter-offer and re-assess costs / fees, if appropriate.</p> <p>However, as a corruption prevention measure, <u>during the pre-taxation stage, all negotiation on costs</u> MUST be handled via the staff of the Application and Processing Division. Assigned lawyers, AP or OP should not contact staff of Costing Unit direct for negotiation on costs.</p>
Q26	LAD has already assessed my costs and we reached an agreement on the amount. Why can't LAD pay the agreed costs immediately?

A26	<p>If AP has made a contribution and/or where there is DLA's 1st Charge over any property recovered or preserved, LAD must first obtain the written consent from AP on the amount of common fund costs, which will be paid out of the contribution paid and/or the property subject to DLA's 1st charge, before making the final payment to you. If AP's consent cannot be obtained, taxation proceedings have to be commenced and final payment can only be made upon conclusion of taxation.</p> <p>In the unfortunate case of say an AP who passed away after conclusion of proceedings, we need to await grant of probate or letter of administration in order to accept a valid consent from the executor or administrator.</p>
Q27	<p>I have changed firms a number of times. Can I agree / receive costs and disbursements from LAD direct and ask LAD to apportion the amount for me?</p>
A27	<p>No.</p> <p>You should include all costs incurred in the previous firms when negotiating P & P costs with OP. You should seek the agreement from the former firms on the apportionment of costs to be paid to each firm and inform LAD with supporting documents recording the agreement.</p> <p>When submitting your bill of common fund costs to LAD for assessment, you should likewise include all common fund costs incurred in the previous firms, with apportionment in accordance with your costs earned in each of the firms. We will assess and agree costs with each firm with your assistance. Upon agreement of the amount of costs by all firms and also by AP, payment will be arranged to the firms.</p>

Important Note: This FAQ serves as a quick guide on DLA's assessment and payment of costs and disbursements claimed by AS in civil cases. It is intended for general reference only and is not intended to be an authoritative statement of the law. In case of any discrepancy, LAO and its subsidiary legislations shall prevail. AS should refer to and be familiar with the relevant law and practice, including but not limited to the LAO, Legal Aid Regulations (Cap 91A), Legal Aid (Scale of Fees) Regulations (Cap 91C) and Manual for Legal Aid Practitioners (<https://www.lad.gov.hk/eng/lap/pf.html>) as may be updated from time to time. AS should also refer to the correspondence from LAD in the particular assigned case. Please note that the handling of costs assessment and payment may vary depending on the specific circumstances of the case. If in doubt, AS is encouraged to contact the handling officer of the assigned case for clarification.